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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE-2016-BT-STD-0007]

RIN: 1904-AD65

Energy Conservation Program: Energy Conservation Standards for Direct Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including direct heating equipment. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this final rule, DOE is finalizing its determination that more-stringent energy conservation standards for direct heating equipment are not economically justified and is therefore not amending its energy conservation standards.

DATES: The effective date of this rule is **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: The docket for this rulemaking, which includes Federal Register notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at <https://www.regulations.gov/docket?D=EERE-2016-BT-STD-0007>. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program Staff at (202) 586-6636 or by email:

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I. Summary of the Determination

DOE has determined that energy conservation standards should not be amended for direct heating equipment (DHE). DOE has concluded that the DHE market characteristics are largely similar to those analyzed in the previous rulemaking and the technologies available for improving DHE energy efficiency have not advanced significantly since the previous rulemaking analyses¹ (concluding with the publication of a final rule on April 16, 2010, hereafter “April 2010 Final Rule”). 75 FR 20112. In addition, DOE believes the conclusions reached in the April 2010 Final Rule regarding the benefits and burdens of more stringent standards for DHE are still relevant to the DHE market today. Therefore, DOE has determined that amended energy conservation standards would not be economically justified.

A. Authority

Title III, Part B² of the Energy Policy and Conservation Act of 1975 (“EPCA” or “the Act”), Pub. L. 94-163 (codified at 42 U.S.C. 6291-6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles.³ This program covers most major household appliances (collectively referred to as “covered products”) including DHE, which are the subject of this document. (42 U.S.C. 6292 (a)(9)) EPCA prescribed initial energy conservation standards for DHE and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C.

¹ With the exception of condensing technology for fan-type wall furnaces, discussed in section II.

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

³ All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act, Pub. L. 114-11 (April 30, 2015).

6295(e)(3) and (4)) DOE is issuing this final determination pursuant to that requirement, in addition to the requirement under 42 U.S.C. 6295(m), which states that DOE must periodically review its already established energy conservation standards for a covered product not later than six years after issuance of any final rule establishing or amending such standards. As a result of such review, DOE must either publish a notice of proposed rulemaking to amend the standards or publish a notice of determination indicating that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1)(A) and (B))

Pursuant to the requirements set forth under EPCA, any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) Moreover, DOE may not prescribe a standard: (1) for certain products, including DHE, if no test procedure has been established for the product,⁴ or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after considering, to the greatest extent practicable, the following seven statutory factors:

⁴ The DOE test procedures for DHE appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix O and 10 CFR 430, subpart B, appendix G (Appendix G).

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Finally, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)-(B)) DOE's current test procedures for vented home heating equipment address standby mode fossil-fuel energy use only.

B. Background

1. Current Standards

In the April 2010 Final Rule, DOE prescribed the current energy conservation standards for DHE manufactured on and after April 16, 2013. 75 FR 20112. These standards are set forth in DOE's regulations at 10 CFR 430.32(i)(2) and are shown in Table I-1.⁵

Table I-1 Federal Energy Conservation Standards for DHE (10 CFR 430.32(i)(2))

Product class	Annual Fuel Utilization Efficiency, April 16, 2013 (percent)
Gas wall fan type up to 42,000 Btu/h	75
Gas wall fan type over 42,000 Btu/h	76
Gas wall gravity type up to 27,000 Btu/h	65

⁵ DOE notes that DHE is defined at 10 CFR 430.2 as vented home heating equipment and unvented home heating equipment; however, the existing energy conservation standards apply only to product classes of vented home heating equipment. There are no existing energy conservation standards for unvented home heating equipment.

Gas wall gravity type over 27,000 Btu/h up to 46,000 Btu/h	66
Gas wall gravity type over 46,000 Btu/h	67
Gas floor up to 37,000 Btu/h	57
Gas floor over 37,000 Btu/h	58
Gas room up to 20,000 Btu/h	61
Gas room over 20,000 Btu/h up to 27,000 Btu/h	66
Gas room over 27,000 Btu/h up to 46,000 Btu/h	67
Gas room over 46,000 Btu/h	68

2. History of Rulemakings for Direct Heating Equipment

EPCA, as codified, initially set forth energy conservation standards for certain DHE product classes that are the subject of this document and directed DOE to conduct two subsequent rulemakings to determine whether the existing standards should be amended. (42 U.S.C. 6295(e)(3) and (4)) The first of these two rulemakings included both DHE and pool heaters and concluded with the April 2010 Final Rule (codified at 10 CFR 430.32(i) and (k)). 75 FR 20112. With respect to DHE, the first rulemaking amended the energy conservation standards for vented home heating equipment, a subset of DHE, and consolidated some of the product classes from the previous standards established by EPCA. Compliance with the amended standards was required beginning on April 16, 2013. Id. DOE did not issue standards for unvented home heating equipment, a subset of DHE, finding that such standards would produce insignificant energy savings. 75 FR 20112, 20130.

This rulemaking satisfies the statutory requirement under EPCA to (1) conduct a second round of review of the DHE standards (42 U.S.C. 6295(e)(4)(B)) and (2) publish either a notice of determination that standards for DHE do not need to be amended or a

notice of proposed rulemaking proposing to amend the DHE energy conservation standards (42 U.S.C. 6295(m)(1)). To initiate this rulemaking,⁶ DOE issued a Request for Information (RFI) in the Federal Register on March 26, 2015 (hereafter “March 2015 RFI”). 80 FR 15922. Through that RFI, DOE requested data and information pertaining to its planned technical and economic analyses for DHE and pool heaters.

Subsequently, on April 11, 2016, DOE published in the Federal Register a Notice of Proposed Determination (April 2016 NOPD) to not amend its energy conservation standards for DHE. 81 FR 21276. Due to the lack of advancement in the DHE industry since the April 2010 Final Rule in terms of product offerings, available technology options and associated costs, and declining shipment volumes, DOE believed that amending the DHE energy conservation standards would impose a substantial burden on manufacturers of DHE, particularly to small manufacturers. DOE also tentatively concluded that energy conservation standards for unvented home heating equipment, a form of DHE, would likely result in negligible energy savings and therefore did not propose standards for this product. In this final determination, DOE finalizes its proposed determination from the April 2016 NOPD.

⁶ Although the March 2015 RFI and the previous energy conservation standards rulemaking included both DHE and pool heaters, DOE subsequently elected to conduct separate rulemakings for each of these products. This rulemaking pertains solely to the energy conservation standards for DHE.

II. Rationale

A. Previous Rulemaking

In the most recent DOE rulemaking for DHE energy conservation standards, DOE initially proposed standards for vented home heating products in a NOPR published on December 11, 2009 (“December 2009 NOPR”) that represented a six AFUE percentage point (weighted-average across all product classes) increase over the standards established by EPCA and codified at 42 U.S.C. 6295(e)(3). 74 FR 65852 (December 11, 2009). In response to the December 2009 NOPR several commenters presented the following concerns:

- Shipments of DHE were low, therefore energy savings potential was low;
- Low shipments would make it difficult to recoup manufacturers’ expenditures related to complying with amended standards;
- Product offerings may be reduced;
- Manufacturers may leave the market entirely; and
- Employment in the industry may be negatively impacted due to reduced product lines and/or insufficient return on investment required to meet amended standards.

In the April 2010 Final Rule, DOE also found that:

- The industry had gone through considerable consolidation, with three businesses controlling the vast majority of the market;
- Consolidation was driven by the decrease in shipments;
- Product lines were predominantly maintained to provide replacements, not new construction; and
- Small business manufacturers could be disproportionately disadvantaged by a more stringent standard due to low shipment volumes and a high ratio of anticipated investment costs to annual earnings.

DOE ultimately rejected TSL 3 and all higher TSLs in the April 2010 Final Rule on the grounds that capital conversion costs would lead to a large reduction in INPV and that small businesses would be disproportionately impacted. DOE also noted that the life-cycle cost (LCC) and payback period analyses (PBP) for TSL 4 and higher suggested that benefits to consumers were outweighed by initial costs. 75 FR 20112, 20215-20218 (April 16, 2010). DOE, therefore, adopted standards at TSL 2 for vented home heating equipment. Compliance with the adopted standards (codified at 10 CFR 430.32(i)(2)) was required for all vented home heating equipment manufactured on or after April 16, 2013.

B. April 2016 Proposal Not to Amend

In the April 2016 NOPD DOE found that few changes to the industry and product offerings had occurred since the April 2010 Final Rule and therefore the conclusions presented in that final rule were still valid. First, DOE conducted a review of the current DHE market, including product literature and product listings in the DOE Compliance Certification Management System (CCMS) database and Air-Conditioning, Heating, and Refrigeration Institute (AHRI) product directory.⁷ DOE found that the number of models offered in each of the DHE product classes has decreased overall since the previous rulemaking. This supported the notion that the DHE market was shrinking and that product lines were mainly maintained as replacements for existing DHE units, and that new product lines generally were not being developed.

Second, DOE examined available technologies used to improve the efficiency of DHE. DOE contractors analyzed current products through product teardowns and engaged in manufacturer interviews to obtain further information in support of its analysis. In response to the March 2015 RFI, AHRI commented that the current energy conservation standards are close to if not at the maximum technology level for most product classes of DHE. (Docket EERE-2015-BT-STD-0003: AHRI, No. 7 at p. 4) During confidential manufacturer interviews, DOE received similar feedback regarding the small potential for improving efficiency over current standards for most product classes. Moreover, manufacturers suggested that because these units are primarily sold as

⁷ The AHRI directory for DHE can be found at: <https://www.ahridirectory.org/ahridirectory/pages/dht/defaultSearch.aspx>. The DOE CCMS database can be found at: <http://www.regulations.doe.gov/certification-data/>.

replacement units, new designs or prototypes are generally not being pursued. DOE noted in the April 2016 NOPD that the same technology options (namely improved heat exchanger, induced draft, electronic ignition, and a two-speed blower for wall fan-type furnaces) were considered as part of the previous DHE rulemaking analysis, and agreed that the technology options available for DHE likely have limited potential for achieving energy savings.⁸ Furthermore, the costs of technology options were anticipated to be similar or higher than in the previous rulemaking analysis due to reduced shipments and therefore the purchasing power of DHE manufacturers.

In addition to these technology options, DOE also noted that a condensing fan-type wall furnace with two input capacities (17,500 Btu/h with a 90.2% AFUE rating, and 35,000 Btu/h with a 91.8% AFUE rating) had become available since the last rulemaking. DOE must set amended standards that result in the maximum improvement in energy efficiency that is technologically feasible (42 U.S.C. 6295(p)(1)) and economically justified. (42 U.S.C. 6295(o)(2)(A)) DOE generally considers technologies available in the market or in prototype products in its list of technologies for improving efficiency. Therefore, DOE determined that this condensing fan-type wall furnace represented the max-tech efficiency level for fan-type wall furnaces for this rulemaking. DOE received feedback during manufacturer interviews regarding the manufacturer production cost for the condensing unit that indicated that condensing models are significantly more

⁸ DOE notes that for room heaters with input capacity up to 20,000 Btu/h, the maximum AFUE available on the market increased from 59% in 2009 (only one unit at this input capacity was available on the market at that time) to 71% in 2015. DOE believes that this is due to heat exchanger improvements only because these units do not use electricity. Due to the small input capacity, DOE does not believe that this increase in AFUE (based on heat exchanger improvements relative to input capacity) is representative of or feasible for other room heater product classes.

expensive to manufacture than non-condensing models. Manufacturer feedback also indicated that shipments of these units are so low as to be negligible, as consumers are not willing to pay the high initial cost for such products. Furthermore, only one manufacturer currently makes a condensing fan-type wall furnace and others would need to make substantial investments in order to produce these units on a scale large enough to support a Federal minimum standard. Therefore, DOE concluded that this technology option, which was not considered in the analysis for the April 2010 Final Rule, would not be economically justified today when analyzed for the Nation as a whole. DOE believes that severe manufacturer impacts would be expected if an energy conservation standard were adopted at this level.

Finally, DOE acknowledged in the April 2016 NOPD that the DHE industry had seen further consolidation, with the total number of manufacturers declining from six to four. Furthermore, according to manufacturers,⁹ shipments further decreased since the April 2010 Final Rule, and therefore it would be more difficult for manufacturers to recover capital expenditures resulting from increased standards. DOE acknowledged that DHE units continue to be produced primarily as replacements and that the market is small, and expected that shipments would continue to decrease and amended standards would likely accelerate the trend of declining shipments. Moreover, DOE anticipated that small business impacts resulting from amended standards could be significant, as two of the four remaining manufacturers subject to DHE standards are small businesses. DOE believed that its conclusions regarding small businesses from the April 2010 Final

⁹ Information obtained during confidential manufacturer interviews.

Rule (i.e., that small businesses would be likely to reduce product offerings or leave the DHE market entirely if the standard was set above the level adopted in that rulemaking) were still valid concerns.

In light of these considerations, DOE proposed in the April 2016 NOPD not to amend its energy conservation standards for DHE. DOE tentatively concluded that amended standards for DHE could not be economically justified based on low and declining shipments, lack of cost-effective technology options, and the potential for severe impacts on small businesses.

C. Comments Received

In response to the April 2016 NOPD, DOE received five comment submissions from Tyler McAnelly (individual), the American Public Gas Association (APGA), the Association of Home Appliance Manufacturers (AHAM), the California Investor Owned Utilities (CA IOUs), and the Air-conditioning, Heating, and Refrigeration Institute (AHRI).¹⁰

APGA, AHAM, and AHRI supported DOE's tentative determination that amended standards for DHE would not be economically justified. (APGA, No. 4 at p. 1-2; AHAM, No. 5 at p. 2; AHRI, No. 7 at p. 1-2) APGA reiterated that because the market is small, any increase in the standard would result in significant impacts on manufacturers. (APGA, No. 4 at p. 1) AHRI agreed that model offerings had been

¹⁰ All public comment submissions can be found at: <https://www.regulations.gov/docket?D=EERE-2016-BT-STD-0007>

reduced and suggested that this was a result of the last rulemaking. (AHRI, No. 7 at p. 1) They agreed with DOE's determination that an amended standard set at a condensing efficiency level for fan-type wall furnaces would severely impact manufacturers. (AHRI, No. 7 at p. 1) They also presented their estimates of the percent change in total shipments for the years 2010-2015 compared with the total shipments over the period 2001-2006, estimating that wall furnace shipments were 21% less, direct vent wall furnace (a form of wall furnace) shipments were 31% less, and room heater shipments were 44% less. (AHRI, No. 7 at p. 2)

McAnelly suggested that amended standards for DHE may be technologically feasible, may save a significant amount of energy such that DOE should not wait until such standards are economically justified, and that therefore DOE should consider adopting amended standards for DHE. (McAnelly, No. 3 at p. 1) In response, DOE notes that it is required by statute (42 U.S.C. 6295(o)(2)(A)) to establish energy conservation standards that are both technologically feasible and economically justified, and therefore cannot legally amend standards that cannot be shown to be economically justified based on the seven criteria found at 42 U.S.C. 6295(o)(2)(B).

In response to the April 2016 NOPD, the CA IOUs urged DOE to consider energy conservation standards for portable electric heaters (a form of unvented home heating equipment). They cited reports indicating both a growing market, the overall energy use for these products, and the prevalence of thermostats and their potential to save energy. They also suggested that DOE modify the test procedure for unvented home heating equipment in order to reflect energy savings due to control features like

thermostats, occupancy sensors, automatic shut-off, and network capabilities. (CA IOUs, No. 6 at p. 1-2)

The DOE test procedure for unvented home heating equipment (Appendix G), includes a calculation of annual energy consumption based on a single assignment of active mode hours for unvented heaters that are used as the primary heating source for the home. For unvented heaters that are not used as the primary heating source for the home, there are no provisions for calculating either the energy efficiency or annual energy consumption. Pursuant to 42 U.S.C. 6295(o)(3) DOE is prohibited from prescribing a new or amended standard for a covered consumer product if a test procedure has not been prescribed for that consumer product. As such, DOE cannot consider standards for these products at this time. DOE may consider amending the test procedures and establishing standards for unvented home heating equipment in the future.

III. Final Determination Not To Amend

DOE did not receive any comments or data suggesting that DOE's initial analysis of the DHE market in the April 2016 NOPD was inaccurate. Therefore, due to the lack of advancement in the DHE industry since the April 2010 Final Rule in terms of product offerings, available technology options and associated costs, and declining shipment volumes, DOE continues to believe that amending the DHE energy conservation standards would impose a substantial burden on manufacturers of DHE, particularly to small manufacturers. DOE rejected higher TSLs during the previous DHE rulemaking due to significant impacts on industry profitability, risks of accelerated industry

consolidation, and the likelihood that small manufacturers would experience disproportionate impacts that could lead them to discontinue product lines or exit the market altogether. DOE believes that the market and the manufacturers' circumstances are similar to those found when DOE last evaluated amended energy conservation standards for DHE for the April 2010 Final Rule. As such, DOE believes that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. Therefore, DOE has determined not to amend the DHE energy conservation standards.

As discussed in section I.A, EPCA requires DOE to incorporate standby mode and off mode energy use into a single amended or new standard (if feasible) or prescribe a separate standard for standby mode and off mode energy consumption in any final rule establishing or revising a standard for a covered product, adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)(A)-(B)) Because DOE is not amending standards for DHE in this rule, DOE is not required to adopt amended standards that include standby and off mode energy use. DOE notes that fossil fuel energy use in standby mode and off mode is already included in the AFUE metric, and DOE anticipates that electric standby and off mode energy use is small in comparison to fossil fuel energy use.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This final determination is not subject to review under Executive Order (E.O.) 12866, “Regulatory Planning and Review.” 58 FR 51735 (October 4, 1993).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (<http://energy.gov/gc/office-general-counsel>).

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. In this final determination, DOE finds that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. This determination

does not establish amended energy conservation standards for DHE. On the basis of the foregoing, DOE certifies that this determination will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an FRFA for this final determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This final determination, which determines that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens, and imposes no new information or record keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.)

D. Review Under the National Environmental Policy Act of 1969

In this final determination, DOE determines that amended energy conservation standards for DHE would not be economically justified at any level above the current standard level because benefits of more stringent standards would not outweigh the burdens. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, codified at 42 U.S.C. 4321 et seq. is not required at this time because standards are not being adopted.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. As this final determination determines that amended standards are not likely to be warranted for DHE, there is no impact on the policymaking discretion of the states. Therefore, no action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly

specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed

“significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf. This final determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so these UMRA requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final determination will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 15, 1988), DOE has determined that this final determination will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Because this final determination determines that amended standards for DHE are not warranted, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." Id. at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results,

and the productivity and management effectiveness of programs and/or projects. The “Energy Conservation Standards Rulemaking Peer Review Report” dated February 2007 has been disseminated and is available at the following website:

www.energy.gov/eere/buildings/peer-review.

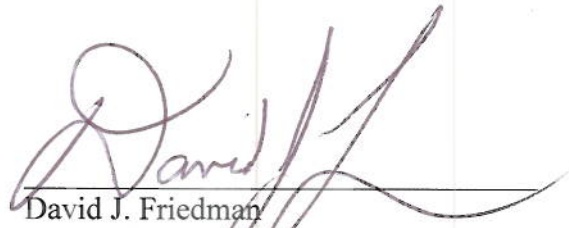
V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

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